



# TERMS AND CONDITIONS

# TERMS & CONDITIONS OF PURCHASE

## I. GENERAL PROVISIONS

### 1. DEFINITIONS

For the purpose of these Terms and Conditions (hereinafter "TC"):

- a. "Kenz Figeo" means Kenz Figeo Group B.V. and all affiliated and associated companies, in so far as such companies declare these general purchasing conditions applicable to its legal relationships with the Contractor;
- b. "Installation" means the setting up and/or connection of a Product or an assembly of Products, and preparing them for use in such a way that the Product, or the assembly of Products, works in accordance with the Specifications;
- c. "Employee" means everyone who, by virtue of their employment, works for the Contractor and is involved in implementation of the Purchase Order and/or Agreement by the Contractor;
- d. "Offer" means every specification of a Performance, prices and/or times given by the Contractor;
- e. "Contractor" means every person or legal person who concludes an Agreement with Kenz Figeo or who submits an offer to Kenz Figeo or with whom Kenz Figeo has any legal relationship or undertakes any legal act.
- f. "Purchase Order" means any commission by Kenz Figeo for the supply of a Performance by the Contractor, as set out in the attached purchase order document;
- g. "Agreement" means every agreement which is concluded between Kenz Figeo and the Contractor, any amendment or supplement thereto as well as all (legal) acts in preparation for or implementation of that agreement;
- h. "Performance" means the Products, Installations, services and work offered by the Contractor;
- i. "Products" mean the goods and services offered by the Contractor and the rights to use those things;
- j. "Specifications" mean the (technical) specifications, descriptions or drawings of the Performance, as laid down in the Purchase Order and/or Agreement or in the documents named in the Purchase Order and/or Agreement, or other documents signed in this respect by the parties.

### 2. APPLICABILITY AND RELATIONSHIP

**2.1** These TC's are applicable to all Purchase Orders, inquiries, commissions and contracts between Kenz Figeo and the Contractor relating to the purchase of goods or services, including also negotiation and other pre-contractual situations.

**2.2** The Incoterms 2010, as agreed upon between the parties, will be applicable to all transnational agreements for the sale of goods.

**2.3** Each party is an independent contractor and neither party is, nor shall be considered to be, the other's agent, distributor, partner, fiduciary, joint venture or co-owner. Neither party will be allowed to act on behalf of the other party.

### 3. OFFERS AND THE CONCLUSION AND CANCELLATION OF PURCHASE ORDERS AND/OR AGREEMENTS

**3.1** Requests for an offer are not binding on Kenz Figeo and are considered to be an invitation to submit an offer.

**3.2** By submitting an Offer, the Contractor makes a commitment to Kenz Figeo to supply a Performance for a fixed total price or a fixed standard price within the time-limit set for delivery. The Offer remains valid for a period of sixty calendar days. Kenz Figeo will not reimburse any costs connected with submission of an Offer.

**3.3** In the event of any clear errors in or contradictions between parts of the request for an offer, the Contractor must consult Kenz Figeo before making an Offer.

**3.4** Kenz Figeo is not obliged to provide any information about why an order is or is not placed with the Contractor. The documentation given to the Contractor by Kenz Figeo for submission of an offer must be returned to Kenz Figeo free of charge if no order is placed.

**3.5** The Purchase Order from Kenz Figeo must be signed by the Contractor and returned within two days of the date of the Purchase Order. If the Contractor does not return the Purchase Order on time, Kenz Figeo does not have any obligation towards the Contractor.

**3.6** Kenz Figeo has the right to cancel the Purchase Order and/or Agreement at any time, if the Contractor has not yet started to implement the Purchase Order and/or Agreement. In that case Kenz Figeo will reimburse the costs actually incurred by the Contractor, in so far as these are reasonable.

**3.7** If the Contractor starts work before receiving a Purchase Order from Kenz Figeo it does so at its own expense and risk.

### 4. AMENDMENTS OR VARIATIONS

**4.1** Amendments or variations to any provision in a Purchase Order and/or Agreement are applicable only if they have been agreed to in writing.

**4.2** When an amendment or variation as referred to in clause 4.1 is agreed upon, it is applicable only in respect of the Purchase Order and/or Agreement in question.

**4.3** In the event of clear errors in or contradictions between parts of the Purchase Order and/or Agreement, the Contractor must consult Kenz Figeo before starting to implement the Purchase Order and/or Agreement, so that the Purchase Order and/or Agreement can be amended where necessary.

**4.4** Kenz Figeo has the right to require the Contractor to carry out additional work or, where appropriate, make a reduction in work. However, additional work or a reduction can be affected and the associated costs can be paid only if and in so far as Kenz Figeo has expressly agreed to this in writing.

**4.5** The Contractor must give a written price quotation for the additional work or reduction in question, within an agreed period or, in the absence of this, within ten working days of Kenz Figeo commissioning the additional work or reduction referred to

in clause 4.4. The additional work or reduction is agreed only if the price quotation is accepted in writing by Kenz Figeo.

**4.6** Notwithstanding the provision of clause 4.5, the price will be determined by mutual agreement between the parties after completion of the additional work or the reduction, only if, in the opinion of the Contractor and with the written consent of Kenz Figeo, the price of the additional work or the reduction cannot be quoted in time because of the nature of the work.

**4.7** If, in the opinion of Kenz Figeo, the effects of the additional work or the reduction on the price or the delivery time are unreasonable compared to the scope of the amendment, Kenz Figeo has the right to cancel all or part of the Purchase Order and/or Agreement, unless this would be unreasonable in the light of the circumstances. Cancellation on the basis of this clause does not give the Contractor a right to compensation.

### 5. QUALITY AND SPECIFICATION OF THE PERFORMANCE

**5.1** The Performance must:

- be consistent with what is stated in the Purchase Order and/or Agreement in terms of quantity, specification and quality and be fit for the purpose;
- in all respects, be consistent with and comply with the Specifications;
- be suitable for the intended purpose;
- be accompanied by the necessary instructions to Kenz Figeo and/or its staff, in order to enable Kenz Figeo and/or its staff to make use of the Performance independently;
- include all applications for licenses which are necessary for implementation of the Purchase Order and/or Agreement;
- include the drawing and other preparatory work and/or development work to be undertaken for implementation of the Purchase Order and/or Agreement; and
- comply with all applicable legal requirements and regulations with regard to the design, composition and quality.

**5.2** In so far as the Performance includes Products, the Products will be:

- manufactured from sound, new materials and be well constructed;
- manufactured from parts and raw materials for which the origin is traceable;
- free from defects in workmanship and material, hidden or apparent;
- not contain any asbestos or other carcinogenic substances or be hazardous to health in any other way;
- accompanied by the necessary documents, such as packing lists, guarantee and/or quality certificates, certificates, drawings, instruction manuals, parts lists and maintenance instructions at the same time as delivery of the Performance to Kenz Figeo;
- provided with a type, serial and machine number and with an indication of origin by means of a proper identifying mark from the manufacturer or importer, or, if this is not possible, the packaging of the Products will carry such marks; and
- accompanied by the invoices in duplicate, and, in addition to the date, invoice number and order number, these will also state the name of the manufacturer and importer and the type, serial and machine number.

### 6. INSPECTION PRIOR TO DELIVERY

**6.1** Prior to delivery, the Contractor will carefully inspect whether the Performance is consistent with what has been agreed upon, without any cost to Kenz Figeo, and, if Kenz Figeo so requires, the Contractor will report this inspection to it in good time. Kenz Figeo, and third parties to be designated by it, have the right to be present at the inspection. At the request of Kenz Figeo, the Contractor will provide it with a copy of the inspection report(s), free of charge.

**6.2** Kenz Figeo, and third parties to be designated by it, are entitled to inspect production of the Performance and the progress of production wherever such production takes place, provided that this is not precluded by manufacturing confidentiality.

**6.3** The Contractor must inform Kenz Figeo, in writing, of any objections to the inspection by the third parties referred to in clauses 6.1 and 6.2. If these objections are reasonable, Kenz Figeo will not have the inspection carried out by those third parties.

**6.4** If Kenz Figeo makes use of its right to inspect, the Contractor will be responsible for the facilities which Kenz Figeo reasonably requires for the inspection, free of charge.

**6.5** If Kenz Figeo finds, on inspection, that all or part of the Performance is not consistent with the Purchase Order and/or Agreement or that this will probably not be the case on completion of processing or production, Kenz Figeo will notify the Contractor of this in writing. In that case, the Contractor must immediately take the necessary measures at its own expense to comply with the provisions and conditions of the Purchase Order and/or Agreement. The costs of any necessary second inspection by Kenz Figeo will be borne by the Contractor.

**6.6** Inspection by Kenz Figeo, as referred to in this clause, does not relieve the Contractor of any liability.

### 7. PACKAGING, TRANSPORT, STORAGE AND INSTALLATION

**7.1** The Performance must be appropriately packed and secured, minimizing the effect on the environment as well minimizing handling efforts for Kenz Figeo, its client and Contractor, and transported in such a way that it reaches its destination in good condition.

**7.2** All costs connected with the Purchase Order and/or Agreement or its implementation in respect of packaging, transport, storage (other than as referred to in clause 8) and installation of the Performance and of items made available by Kenz Figeo, as referred to in clause 23 as well as the costs of insurance for transport, storage and Installation are to be borne by the Contractor. The Contractor will refund these costs to Kenz Figeo immediately, where Kenz Figeo has incurred such costs.

### 8. STORAGE ON BEHALF OF KENZ FIGEO

If the Performance is ready for delivery but Kenz Figeo cannot reasonably take receipt of it at the agreed time, the Contractor will keep possession of the Performance free of charge, for up to thirty (30) days. Thereafter, Kenz Figeo will reimburse the costs incurred by the Contractor based on the Contractor's then current standard storage fee rates. The Performance will be stored separately and clearly marked as intended for

Kenz Figeo, safeguard it and also take all necessary measures to prevent any reduction in quality until the Performance is delivered.

## 9. TRANSFER OF OWNERSHIP AND RISK

**9.1** Ownership of and the risk for the Performance as well as parts of the Performance, such as materials, pass to KENZ FIGEE on delivery. In the absence of an agreed delivery place, the delivery place shall be the office address of KENZ FIGEE.

**9.2** Notwithstanding the provisions of clause 9.1, in the case referred to in clause 8, KENZ FIGEE acquires ownership of the Performance at the time at which it is stored on behalf of KENZ FIGEE; however, the risk remains with the Contractor until delivery of the Performance.

**9.3** Products which are handed over to the Contractor by KENZ FIGEE for repair, processing or manufacturing are at the risk of the Contractor during the repair, processing or manufacturing period.

**9.4** If, contrary to the provision of clause 13, it is agreed that what KENZ FIGEE owes pursuant to the Purchase Order and/or Agreement is to be paid in advance, all materials, raw materials and semi-finished products, which the Contractor uses or intends to use for implementation of the Purchase Order and/or Agreement, as well as all Products undergoing processing, are supplied, and full and free ownership of them is transferred to KENZ FIGEE by the Contractor.

**9.5** Where necessary, the Contractor declares, in advance if necessary, that it will supply all the items listed in clause 9.4 to KENZ FIGEE and transfer ownership at the time that the Contractor receives the advance payment.

**9.6** From the time that the Contractor receives the advance payment, it holds all the items specified in clause 9.4 for KENZ FIGEE, and the Contractor is obliged to identify these items satisfactorily and to keep possession of them on behalf of KENZ FIGEE, separate from other items.

## 10. TIME OF DELIVERY AND PENALTIES

**10.1** The Contractor will deliver the Performance on the date set down in the Purchase Order and/or Agreement. If the Purchase Order and/or Agreement indicates a period instead of a date, this period begins on the day on which the Contractor received the Purchase Order and/or Agreement or - if that is later - on the day on which the Contractor has at its disposal the information, drawings, models, materials or appliances to be provided by KENZ FIGEE, which the Contractor needs in order to be able to start implementing the Purchase Order and/or Agreement.

**10.2** The delivery time or, where appropriate, the delivery period is binding. As soon as the Contractor knows or anticipates that the Performance cannot be delivered on time, it will immediately inform KENZ FIGEE of this in writing, stating the reason why.

**10.3** If all or part of the Performance is not delivered at the agreed upon delivery time or within the agreed upon delivery period, Contractor shall be liable to forfeit an immediately payable penalty not eligible for setting off to KENZ FIGEE of 1% (one percent) per day, with a maximum of 20% (twenty percent) of the total purchase price as defined in the Purchase Order and/or Agreement without prejudice to KENZ FIGEE's right to either demand specific performance under the Purchase Order and/or Agreement, or to cancel all or part of the Purchase Order and/or Agreement with effect from a date to be determined by KENZ FIGEE, or to claim compensation of the actual damage suffered by KENZ FIGEE.

## 11. INSPECTION ON DELIVERY AND ACCEPTANCE

**11.1** If it is found on delivery that all or part of the Performance is not consistent with the terms of the Purchase Order and/or Agreement, KENZ FIGEE will give written notice of rejection to the Contractor. The Contractor will ensure that the Performance will comply with the terms and conditions of the Purchase Order and/or Agreement within a period to be specified by KENZ FIGEE.

**11.2** The Performance delivered is accepted provisionally if the Performance appears to be consistent with the specification in the Purchase Order and/or Agreement.

**11.3** If an acceptance test has been agreed upon, the procedure described in the Purchase Order and/or Agreement will be followed and KENZ FIGEE accepts the Performance on condition that the results of such a test show that the requirements laid down have been met and without prejudice to the rights of KENZ FIGEE in the event of hidden defects or a negative result in the functional test to be carried out later.

**11.4** Acceptance as referred to in this clause 11 does not preclude KENZ FIGEE from subsequently relying on non-compliance by the Contractor of its obligations.

## 12. PRICE

**12.1** The price agreed upon is binding and cannot be changed as a result of a change in exchange rates, purchase prices, freight rates, import or export duties, excise duties, levies, taxes, raw materials or semi-finished products, wages and other services due to the Contractor from third parties.

**12.2** The price includes:

- all costs as specified in clause 7;
- import duties, excise duties, levies and taxes (with the exception of turnover tax);
- fees and all other charges or costs in respect of the applications for licenses, necessary for provision of the Performance;
- the costs of the instructions to be given by the Contractor to KENZ FIGEE or, where appropriate, its staff;
- the fees for use of the intellectual property rights referred to in clause 22;
- all costs connected with or arising from the provision of the Performance as referred to in clause 5;
- all other costs which, according to or pursuant to the Purchase Order and/or Agreement or these TC's, must be borne by the Contractor; and
- everything that is necessary for proper implementation of the Purchase Order and/or Agreement subject to the applicable standards, regulations and the requirements of good workmanship, even though all this might not be stated explicitly in the Purchase Order and/or Agreement.

**12.3** Contractor warrants that the prices for the Performance (as applicable) to be provided are not less favorable than those currently extended to any other customer for the same or similar goods and services. In the event Contractor reduces its prices for

such goods or services prior to accepting the Purchase Order and/or Agreement or during the term of performance of the Purchase Order and/or Agreement, Contractor agrees to reduce the Prices charged to KENZ FIGEE accordingly.

## 13. PAYMENT

**13.1** The Contractor will not invoice the amounts owed by KENZ FIGEE before the date of delivery of the Performance. Where the Purchase Order and/or Agreement is implemented fully and correctly, KENZ FIGEE will pay the amount invoiced in this respect within sixty (60) days of the invoice date or from the date of delivery, whichever is earlier, after finding the invoice to be correct and according to the specifications in the Purchase Order and/or Agreement.

**13.2** KENZ FIGEE is at all times entitled to offset amounts owed by KENZ FIGEE to the Contractor against everything that KENZ FIGEE has to or may claim at any time from the Contractor, whether or not it is due.

**13.3** Invoices which are sent to KENZ FIGEE after a period of six (6) months, calculated from the delivery of the Performance, will not be accepted and the Contractor's right to payment of such invoices lapses as a result of expiry of that period.

**13.4** Before payment is made, KENZ FIGEE is entitled to require, in addition to or instead of, transfer of ownership, that the Contractor should provide an unconditional and irrevocable bank guarantee at its own expense.

## 14. GUARANTEE OBLIGATION

**14.1** The Contractor is responsible for ensuring that the Performance complies with the provisions of clause 5 in all respects for twenty four (24) months after the date of Installation on KENZ FIGEE's designated site / location or thirty six (36) months after the date of delivery of the Performance, whichever expires first, unless expressly stated otherwise in the Purchase Order and/or Agreement.

**14.2** If, after acceptance of the Performance, KENZ FIGEE reports any defect in the Performance in writing to the Contractor within the guarantee period stated in 14.1 above, the Contractor is obliged to remedy such a defect immediately, free of charge, unless the Contractor demonstrates that the defect has been caused by incorrect or improper use. If, in the reasonable opinion of KENZ FIGEE, replacement of parts of the Performance or, where appropriate, the Products is necessary for a proper repair as referred to above, the Contractor is obliged to make such a replacement.

**14.3** KENZ FIGEE has the right, in the case of a defect, to return the Performance in question, or a part thereof, to the Contractor at the latter's expense and risk, unless it has been agreed between the parties that the necessary replacement or repair by the Contractor will be carried out at the work site of KENZ FIGEE.

**14.4** If the Contractor fails to comply with its obligations as stated in clause 14, KENZ FIGEE is entitled, in urgent cases, or where the Contractor cannot be reached, to carry out, or have carried out, the replacement or repair at the expense of the Contractor, without further warning.

**14.5** The agreed guarantee period for a replaced or repaired Performance restarts at the time at which that the re-performance is accepted by KENZ FIGEE.

## 15. LIABILITY OF AND INDEMNIFICATION BY THE CONTRACTOR

**15.1** The Contractor will compensate in full all direct and indirect damages which have been or will be suffered by KENZ FIGEE or by third parties as a result of or in connection with implementation of the Purchase Order and/or Agreement (including but not confined to consequential damage, environmental damage, damage to materials, equipment or other items, injury, legal and non-legal expenses), irrespective of whether the damage is caused by the Contractor, an Employee or any other (legal) person, for whom the Contractor is responsible.

**15.2** The provision in clause 15.1 is also to be regarded as a condition as referred to in Article 6:253 of the Dutch Civil Code. The condition cannot be revoked by the Contractor and is made free of charge to every third party.

**15.3** The Contractor will indemnify KENZ FIGEE against all claims, demands, rights and actions at law which third parties may bring against KENZ FIGEE in relation to the Purchase Order and/or Agreement or the implementation thereof, or, as the case may be, which may be asserted against KENZ FIGEE at any time, and consequently the Contractor will compensate KENZ FIGEE in full in this respect.

**15.4** The Contractor will indemnify KENZ FIGEE against all product liability claims if such claims are due to a defect in Products delivered by the Contractor. On the same conditions, the Contractor shall also be liable for any damages incurred by KENZ FIGEE in such cases as a result of any required precautionary measures, reasonable in kind and scope, e.g. as a result of warnings or product recalls. The right of KENZ FIGEE to assert damage claim(s) against the Contractor shall not be affected hereby.

## 16. LIABILITY OF KENZ FIGEE

Except in the case of damage caused by intent or gross negligence on the part of KENZ FIGEE or its managerial staff, KENZ FIGEE is not liable for any damages which the Contractor or its Employees suffer (including but not confined to damage as a result of loss, destruction of or damage to items by fire, theft, misappropriation and vandalism).

## 17. SUSPENSION

**17.1** KENZ FIGEE is entitled at all times to suspend all or part of the implementation of the Purchase Order and/or Agreement and to oblige the Contractor to interrupt implementation of the Purchase Order and/or Agreement for a period of time to be determined by KENZ FIGEE.

**17.2** The Contractor is obliged to limit the damage resulting from this suspension as much as possible by taking appropriate measures.

**17.3** Measures which the Contractor has to take as a result of the suspension will be settled as if they were additional work or, where appropriate, a reduction in work, unless the suspension is caused by any shortcoming on the part of the Contractor.

## 18. FORCE MAJEURE

**18.1** If the parties are unable to comply with their obligations towards each other due to an event that is beyond the reasonable control of that party, and which by its nature could not have been foreseen by such party, or if it could have been foreseen, was



unavoidable (a "Force Majeure event"), compliance with those obligations will be suspended for the duration of the Force Majeure situation.

**18.2** For the purpose of this Agreement the following occurrences shall be Force Majeure: Riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, earthquake, flood, fire, explosion and/or other natural physical disaster, but excluding weather conditions as such, regardless of severity, strikes at a national or regional level or industrial disputes at a national or regional level, maritime or aviation disasters, and changes to any general or local statute, ordinance, decree or other law.

**18.2** If the Force Majeure situation has lasted for three (3) months, each party has the right to cancel all or part of the Purchase Order and/or Agreement, by means of a registered letter. The party terminating the Purchase Order and/or Agreement on the basis of this clause will not be liable for any damage suffered by the other party.

**18.3** The Parties will inform each other of a (possible) Force Majeure situation within two (2) working days.

## 19. DEFAULT / CANCELLATION

**19.1** Every time specified in a Purchase Order and/or Agreement for compliance with an obligation by the Contractor represents a deadline, and therefore the Contractor is in default if these times expire; requests to the Contractor to comply with such an obligation do not affect the above provision and are without prejudice to Kenz Fige's rights as laid down in clause 10.3, even in the case where the delay arises from late or defective delivery of documentation or any other contractual obligation.

**19.2** Kenz Fige is entitled to terminate all Purchase Orders and/or Agreements immediately (without further proof of default) in each of the following cases: (i) if the Contractor fails to meet any obligation of a material nature from a Purchase Order and/or Agreement in full and on time or does not comply with another obligation; (ii) if the Contractor or the party which has acted as guarantor or provided security for the Contractor's obligation applies for temporary suspension of payments, is declared bankrupt, goes into voluntary or involuntary liquidation, suspends operations or takes a decision to suspend liquidation or to apply for bankruptcy or suspension of payments; (iii) if a change occurs with respect to the Contractor's shareholders, in so far as Kenz Fige takes the view that such a circumstance entails a considerable increase in its risks; and (iv) if an attachment is made against the Contractor or the Contractor's assets are threatened with seizure or other judicial measures.

**19.3** In each of the cases listed in clause 19.2 Kenz Fige has the right and the power to suspend implementation of all Purchase Orders and/or Agreements until there is sufficient guarantee of compliance and to suspend any obligations it may have towards the Contractor on any account whatsoever.

**19.4** In each of the cases listed in clause 19.2, all claims by Kenz Fige on the Contractor are payable immediately in full.

**19.5** The provisions of the preceding paragraphs of clause 19 do not affect the rights of Kenz Fige pursuant to the law and the Purchase Order and/or Agreement, including but not confined to the right of Kenz Fige to compliance, full or partial cancellation and the Contractor's obligation to reimburse Kenz Fige for all losses and costs incurred by Kenz Fige as a result.

**19.6** In the event of termination Contractor shall allow Kenz Fige or its nominee full right of access to the worksite to remove and / or take over the Products or the relevant part of the Products so far completed.

## 20. ASSIGNMENT OF RIGHTS AND OBLIGATIONS AND SUB-CONTRACTING

**20.1** The Contractor is forbidden to assign or pledge the Purchase Order and/or Agreement or any part thereof or rights or claims arising from the Purchase Order and/or Agreement to third parties, without the written consent of Kenz Fige.

**20.2** The Contractor may not, without the prior written consent of Kenz Fige, sub-contract the Purchase Order and/or Agreement or any part thereof.

**20.3** The consent referred to in clauses 20.1 and 20.2 will not release the Contractor from any obligation under the Purchase Order and/or Agreement or these TC's.

## 21. AUTHORIZED REPRESENTATIVES

During implementation of the Purchase Order and/or Agreement, Kenz Fige and the Contractor will be represented by one or more authorized representatives, who will be appointed expressly for this purpose and who will have the power to represent and commit Kenz Fige or the Contractor in all matters relating to implementation of the Purchase Order and/or Agreement. Kenz Fige and the Contractor will notify each other in writing, prior to implementation of the Purchase Order and/or Agreement, as to who will be acting for them as authorized representative(s). The parties will inform each other in writing of any change or withdrawal of the authorization.

## 22. INTELLECTUAL PROPERTY

**22.1** All intellectual property rights arising under a Purchase Order and/or the Agreement shall become property of Kenz Fige. The Contractor hereby transfers such intellectual property rights to Kenz Fige and the transfer shall be deemed accepted by Kenz Fige immediately after such rights come into existence.

**22.2** In so far as a special instrument is necessary for the transfer of intellectual property rights as referred to in clause 22.1, the Contractor hereby irrevocably authorizes Kenz Fige now for then, to have such an instrument drawn up, and to sign this on behalf of the Contractor, without prejudice to the Contractor's obligation to cooperate in the transfer of such rights at Kenz Fige's first request, without being able to impose conditions on this. The Contractor hereby also surrenders to Kenz Fige and/or waives all so-called moral rights that may accrue to the Contractor, to the extent permitted by law.

**22.3** The Contractor guarantees that the Performance does not infringe the intellectual property rights of third parties, the Contractor will indemnify Kenz Fige against all claims by third parties which are based on any infringement or alleged infringement of such rights.

## 23. MATERIALS, EQUIPMENT, PARTS, CERTIFICATES, DRAWINGS AND SIMILAR ITEMS MADE AVAILABLE BY KENZ FIGEE

**23.1** Materials, equipment, parts, certificates, drawings and similar items which Kenz Fige places at the disposal of the Contractor for implementation of the Purchase Order and/or Agreement remain the property of Kenz Fige and must be returned in good condition after implementation of the Purchase Order and/or Agreement.

**23.2** Until the items listed in clause 23.1 have been returned to Kenz Fige, these items are at the risk of the Contractor, who is obliged to maintain these items properly.

**23.3** The Contractor will insure all items which it receives from Kenz Fige in connection with the Purchase Order and/or Agreement at its own expense, on behalf of Kenz Fige, on the usual terms and against the risks of complete or partial loss or damage, as a result of fire, theft and vandalism.

**23.4** On receipt of the items referred to in this clause, the Contractor must check whether they are consistent with the Specifications.

## 24. CONTRACTOR'S DESIGN DOCUMENTS

**24.1** All drawings forming part of the Purchase Order and/or Agreement must be produced in A-4 to A-0 format, and the contrast and size must be such as to allow good reproduction.

**24.2** Drawings must indicate all relevant data regarding dimensions, materials and production and, where necessary, must be supported by calculations in accordance with generally accepted methods.

**24.3** All design documents necessary for evaluation of the Performance (digital and hard copy) must be submitted to Kenz Fige by the Contractor in good time for evaluation. Kenz Fige will let it be known whether it approves the design documents as soon as possible after receipt of the documents.

**24.4** The involvement of Kenz Fige in the evaluation of the design documents does not release the Contractor from its liability in this respect.

**24.5** If the Contractor uses CAD systems for producing the design documents, digital versions of these must be supplied at the same time.

## 25. COMPLIANCE WITH LAWS

**25.1** Contractor warrants that in performing its obligations under these TC's all applicable laws, statutes and regulations, which now exist or which will be promulgated during the performance under these TC's, will be complied with.

**25.2** The Contractor shall obtain all licenses, permits, temporary permits and authorizations required by the applicable laws, rules and regulations for the performance of the Purchase Order and/or Agreement save to the extent that the same can only be legally obtained by Kenz Fige.

**25.3** Contractor's warranty in clause 25.1 includes, without limitation, compliance with any applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including, but not limited to the UK Bribery Act 2010 and the US Foreign Corrupt Services Act ("Anti-Bribery Laws"), and in this regard, Contractor:

(i) shall not promise, offer or accept a bribe or an improper or illicit payment or any other benefit to, through or from any person (including, but not limited to, customers, agents, suppliers, contractors, franchisees, subsidiaries, labour unions, government or regulator authority officials) and the Contractor will not seek to influence any person or party to offer or accept improper payments whether on our behalf or otherwise;

(ii) undertakes to prevent bribery being undertaken on its or Kenz Fige's behalf and it undertakes to forthwith notify Kenz Fige if an improper payment or any other benefit is solicited or requested from Contractor in connection with the Purchase Order and/or Agreement or these TC's.

**25.4** Breach of any of the provisions of this clause shall be deemed a material breach entitling Kenz Fige to terminate the Purchase Order and/or Agreement upon written notice to Contractor with immediate effect, and to take any such other remedies or actions to which Kenz Fige is entitled under the TC's, by statute and at law.

## 26. CONFIDENTIALITY

**26.1** The Contractor will treat as confidential all data and/or information which it acquires in connection with implementation of the Purchase Order and/or Agreement, including but not limited to engineering data, design drawings and other documents provided by Kenz Fige, and will not disclose them to third parties without the written consent of Kenz Fige or use for any other purpose than that for which it was provided without the express prior written permission of Kenz Fige. All such information shall be promptly returned to Kenz Fige upon request.

**26.2** In the event of an infringement of the provision of clause 26.1, the Contractor forfeits to Kenz Fige a penalty of EUR -50,000 (fifty thousand euro) per occurrence, payable immediately, and this penalty will not affect any possible obligation on the Contractor to pay compensation or the right of Kenz Fige to claim damages suffered. It is open to Kenz Fige to require compliance by the Contractor in addition to the penalty.

## 27. INSURANCE

**27.1** The Contractor is obliged to take out sufficient insurance and to maintain such insurance at its own expense in respect of its liability in the widest sense (including but not confined to professional liability insurance, product liability, statutory- or strict liability) for Kenz Fige and for third parties.

**27.2** Kenz Fige must be indicated in the insurance policies as co-insured client and also as beneficiary, and it must be laid down that insurers have the right to compensate Kenz Fige directly and/or third parties to be nominated by it. At the request of Kenz Fige, the Contractor is obliged to provide the insurance policies and proof that the insurance premiums have been paid.

## 28. CHOICE OF LAW AND COMPETENT COURT

**28.1** Dutch law is applicable to these TC's and to the Purchase Order and/or Agreement.

**28.2** The applicability of the 1980 Vienna Sales Convention (CISG) is excluded.

**28.3** Unless otherwise imperatively required by law, all disputes between the parties will be subject to the judgment of the competent court in Amsterdam, on the

understanding that Kenz Figeo has the right to bring claims against the Contractor, whether or not at the same time, before other courts of justice which are competent to consider such claims pursuant to national or international rules of law.

## **29. TERMINATION OF THE PURCHASE ORDER AND/OR AGREEMENT**

**29.1** Kenz Figeo has the power at all times to terminate the Purchase Order and/or Agreement prematurely for convenience, in whole or in part, in which event Contractor will be entitled only to reasonable termination charges consisting of actual direct costs resulting from termination.

**29.2** Kenz Figeo will give its reasons for termination as referred to in clause 29.1.

**29.3** The arrangements set out in clause 19 apply exclusively in the cases referred to in clause 19.

## **II. SPECIAL PROVISIONS: CONTRACTING-OUT OF WORK**

In addition to the General Provisions (I), the provisions of this chapter (II) are also applicable to the contracting-out of work and contracting for work. If the Special Provisions differ from the General Provisions, the Special Provisions take precedence.

### **30. ISSUING OF THE ORDER**

Kenz Figeo has the right to put a Contractor which is not certified in accordance with a quality system accepted by Kenz Figeo through a quality audit before issuing the Purchase Order.

### **31. IMPLEMENTATION PLAN**

**31.1** At the request of Kenz Figeo the Contractor must hand over an implementation plan containing, among other things, the commencement and completion times for the successive sections of the work and the number of workers. If it has been agreed that Kenz Figeo will set up equipment, the setting-up times will be indicated in the implementation plan. This implementation plan forms a part of the Purchase Order and/or Agreement, following approval by Kenz Figeo

**31.2** Kenz Figeo has the right to introduce changes into the implementation plan during implementation. The consequences of such changes will be regulated by Kenz Figeo and the Contractor, as far as is reasonable. If necessary, the Purchase Order and/or Agreement will be amended in that case.

**31.3** The Contractor must submit weekly progress reports with form KF-QESH-Q-DO-122 of the work and all related aspects, according to the wishes of Kenz Figeo

### **32. DUTIES OF CONTRACTOR EMPLOYEES**

**32.1** The day-to-day management and supervision of implementation of the work is the responsibility of the Contractor. The number of authorized and competent supervisory officials made available by the Contractor for this purpose must be in accordance with the scope and nature of the work and the requirements laid down by Kenz Figeo in this respect.

**32.2** The Contractor guarantees Kenz Figeo that the services to be provided by its Employees will be carried out in a professional, competent and continuous way and that the Employees meet and continue to meet the agreed qualities in respect of training, expertise and experience. The Employees will be SCC (VCA) or MIST-certified, depending on the requirement at the relevant worksite and will provide a copy of such certification together with a copy of proof of identity before the start of the implementation of the Purchase Order and/or Agreement.

**32.3** The Contractor will be responsible for the conduct of the Employees responsible to implement the work and ensure that the Employees respect all applicable laws and regulations, conform to a high standard of moral and ethical conduct and comply with Kenz Figeo's security requirements and instructions;

**32.4** Employees will be provided with tools, work clothing and personal protection equipment by the Contractor.

**32.5** The Contractor will replace Employees temporarily or permanently only occasionally and then only after prior approval by Kenz Figeo. Kenz Figeo will not withhold its consent unreasonably. Kenz Figeo is entitled to attach conditions to its consent.

**32.6** The parties may agree on a probationary period in respect of Employees. If it becomes clear during this trial period that Employees do not seem capable of carrying out the Purchase Order and/or Agreement to the satisfaction of Kenz Figeo, the Contractor gives a commitment to Kenz Figeo that it will replace these Employees immediately without any additional costs being charged to Kenz Figeo

**32.7** The Purchase Order and/or Agreement will be carried out in accordance with the working hours and rules of conduct applicable at Kenz Figeo at that time. The Contractor will instruct Employees to take note of the working hours and rules of conduct applicable.

**32.8** If implementing the Purchase Order and/or Agreement in another country than its resident country, Employees will refrain from making any political statement or opinion, and will not undertake any political action.

**32.9** Kenz Figeo is entitled to count the Employees at work regularly, and the Contractor will cooperate in this. The Contractor is also obliged to cooperate fully in reasonable administrative arrangements made or yet to be made by Kenz Figeo regarding checking of the number of workers employed for the work, such as having the Contractor provide a daily statement of the workforce on the site, divided up according to each Purchase Order and/or Agreement in progress at the Contractor.

**32.10** Contractor shall ensure that its Employees will not, either during the implementation of the Purchase Order and/or Agreement or for a period of twelve (12) months following the conclusion of the Purchase Order and/or Agreement or termination of his or her employment for any reason including resignation, without the prior written consent of Kenz Figeo, carry on, or be engaged in, or be concerned with, or interested in, or employed by, any person engaged in or concerned with or interested in a business which is the same as, or substantially similar to, or in competition with, Kenz Figeo's business at the time of any such termination.

**32.11** Contractor will be liable for any penalty imposed upon Kenz Figeo from any other company, organization or government institution due to the conduct of one or more of

Contractor's Employees in the implementation of the Purchase order and/or Agreement. Such conduct will include, but not be limited to, any conduct leading to the Employee being prohibited from a scheduled flight, or the Employee being under the influence of alcohol and / or drugs.

**32.12** If the Contractor retains any employees or contractors of its own who will perform services hereunder, Contractor shall ensure that such employees or contractors execute an agreement no less protective of Kenz Figeo's intellectual property and confidential information than set out in Section I.

### **33. WORKING CONDITIONS AND SAFETY**

**33.1** The Contractor is responsible for the working conditions and safety in performing the Purchase Order and/or Agreement. The Contractor must comply with all applicable legal regulations, regulations of the Occupational Health and Safety Inspectorate and the locally applicable safety regulations.

**33.2** The materials, equipment and tools used by the Contractor (including but not confined to hoisting and lifting devices, climbing equipment and scaffolding) must comply with the requirements laid down by the Occupational Health and Safety Inspectorate and must be kept in a good state of repair, all at the discretion of Kenz Figeo.

**33.3** The Contractor must carry out a safety inspection at its worksite periodically, depending on the project. The results of this inspection must be reported to Kenz Figeo

**33.4** The Contractor must periodically take part in safety meetings concerning the Purchase Order and/or Agreement.

**33.5** Employees who, in the opinion of Kenz Figeo, behave dangerously at work must be removed from the worksite as soon as requested by Kenz Figeo. The Contractor must ensure that these Employees are replaced immediately.

**33.6** If it discovers a dangerous situation caused by the Contractor, Kenz Figeo has the right to halt the work without any obligation to pay compensation as a result and without such a stoppage constituting Force Majeure for the Contractor.

### **34. INTERVENTION IN THE WORK**

**34.1** If, in the opinion of Kenz Figeo, the work is progressing in such a way that the period laid down for completion of the Performance or a part thereof will be exceeded, or if the Contractor, in the opinion of Kenz Figeo, is not carrying out or has not carried out the work in accordance with the provisions of the Purchase Order and/or Agreement and/or in accordance with the requirements of good workmanship, Kenz Figeo will notify the Contractor of this in writing.

**34.2** If, within 7 (seven) days of receipt of a notification as referred to in clause 34.1, the Contractor has not taken measures so that, in the opinion of Kenz Figeo, the backlog will be made up within a short time or, where appropriate, the aforementioned provisions and requirements will be met, Kenz Figeo is authorized, without prejudice to the other rights to which it is entitled, to take all such measures which it deems necessary, including refusal to allow the Contractor to carry out the work and the taking over of that work by Kenz Figeo or third parties acting on its authority, without the intervention of the courts. In such a case, the Contractor will provide all necessary cooperation for Kenz Figeo and those third parties.

**34.3** All external and internal costs which Kenz Figeo has to incur in connection with the provision of clause 34.2 shall be borne by the Contractor, which will immediately reimburse Kenz Figeo for these costs. These costs include, as a minimum, a payment for Kenz Figeo in respect of supervision and so-called 'overheads'.

**34.4** In addition, apart from the circumstances set out in clause 34.1, Kenz Figeo is entitled to intervene directly in the work, without thereby relieving the Contractor of its responsibility, if this is necessary in view of operational circumstances, safety and/or legal regulations. Kenz Figeo will notify the Contractor of such intervention as soon as possible.

### **35. DUTCH WAGES AND SALARIES TAX AND SOCIAL SECURITY CONTRIBUTIONS (LIABILITY OF SUBCONTRACTORS) ACT**

**35.1** The Contractor guarantees that the obligations to deduct social insurance and income tax ensuing from legislation are observed with respect to Employees. The Contractor indemnifies Kenz Figeo against any related claim.

**35.2** The Contractor will keep financial records in such a way that the actual wage costs can be determined for each project. Kenz Figeo has the right at all times to inspect these records. The Contractor will state the actual wage costs on each invoice.

**35.3** If the "VAT transfer scheme" is applicable to the Purchase Order and/or Agreement, the Contractor will state this on each invoice.

**35.4** A Contractor that has personnel in its employment who are engaged in connection with the performance of one or more Purchase Orders and/or Agreements will either open a G-account under the Dutch Tax and Custom Administration, or submit quarterly reports that demonstrate that the Contractor has remitted wages and salaries tax, social insurance contributions and/or employee insurance contributions in full and in a timely manner for Employees who are engaged in connection with the performance of the Purchase Order and/or Agreement (Payment History Reports (Verklaring Betalingsgedrag)). At Kenz Figeo's request, the Payment History Report may also pertain to third party persons and legal entities that Contractor has engaged in connection with the performance of the Purchase Order and/or Agreement. The Payment History Reports must be drawn up by the Dutch Tax and Customs Administration (Belastingdienst) or the UWV (Uitvoeringsinstituut Werknemersverzekeringen) benefits agency, and they must be marked as originals. In the event that Contractor has not complied within thirty (30) days of a request to do so, Kenz Figeo will be entitled to suspend any and all payments to Contractor pursuant to any Purchase Order and/or Agreement and Kenz Figeo will be entitled to terminate the Purchase Order and/or Agreement effective immediately in accordance with provisions contained in Article 29. Where Contractor has opted for a G-account, and subject to the provision in clause 13.1, 25% (twenty five percent) of the actual wage costs will be transferred by Kenz Figeo to the Contractor's G-account under the Dutch Tax and Custom Administration.

These TC's can be found on [www.Kenz-Figeo.com](http://www.Kenz-Figeo.com).